12–120. Creation of court of appeals; court of record; composition; sessions.

.010 The Arizona Court of Appeals is a single court, and although it has a division 1 and a division 2, opinions are issued by three-judge panels; because the court has no authority to sit "en banc," it is incorrect to refer to an opinion from the court of appeals as a "Division One" opinion or a "Division Two" opinion.

Rasmussen v. Munger, ___ Ariz. ___, 260 P.3d 296, ¶ 7 (Ct. App. 2011) (case was decided by Division Two; although prior authority was from Division One, court noted both divisions constituted a single court, thus it would not depart from that prior Division One decision unless it was convinced decision was based upon clearly erroneous principles, or conditions have changed to make that decision inapplicable, and did follow that Division One decision).

13–105(12) Definitions. (Dangerous instrument.)

.020 A body part may not be considered a dangerous instrument, but an article of clothing on a body part may be a dangerous instrument.

State v. King, 226 Ariz. 253, 245 P.3d 938, ¶¶ 21–28 (Ct. App. 2011) (defendant kicked victim while wearing tennis shoes; court held tennis shoes could be considered dangerous instruments, but state would have to prove shoe caused greater injuries that foot alone would have caused, or that shoe was wielded as weapon, neither of which state proved).

13–105(22)(c) Definitions. (Historical prior felony conviction—Class 4, 5, or 6 felony.)

.010 This section provides that certain class 4, 5, or 6 felonies committed within 5 years immediately preceding that date of the present offense are considered as historical prior felony convictions.

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 23–24 (Ct. App. 2011) (defendant committed attempted burglary in California some time in 2003, was in custody for a period of time, and committed present offense 6/17/2009; defendant contended state could not establish timeliness of prior conviction beyond reasonable doubt because California records did not show exact date he committed offense; court noted California conviction would have been timely even if defendant had committed it on 1/01/2003, thus defendant had to have committed prior conviction within 5 years).

13–116 Double punishment.

.070 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **First,** whether, after subtracting the facts necessary to support the primary charge, there are sufficient facts to support the secondary charge.

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 11–12 (Ct. App. 2011) (trial court imposed consecutive sentences for theft (of pistol) and misconduct with weapon (pistol); court viewed elements of "ultimate"crime of misconduct with weapon, and concluded there was sufficient remaining evidence to support theft charge).

.080 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **Second,** either (1) the defendant could have committed the primary crime without committing the secondary crime, or (2) if the defendant could not have committed the primary crime without committing the secondary crime, the defendant's commission of the secondary crime exposed the victim to more potential harm than necessary in committing the primary crime.

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 7–10 (Ct. App. 2011) (trial court imposed consecutive sentences for theft (of pistol) and misconduct with weapon (pistol); court concluded defendant could have committed "ultimate"crime of misconduct with weapon without having stolen it).

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 13–14 (Ct. App. 2011) (trial court imposed consecutive sentences for theft (of pistol) and misconduct with weapon (pistol); court noted "ultimate"crime of misconduct with weapon was a risk to public in general, while theft of weapon was harm to individual owner of weapon).

13–202(A) Construction of statutes with respect to culpability—Application of the mental states.

.020 To establish resisting arrest under subsection (A)(2), the state must prove the defendant intentionally prevented an arrest and created a substantial risk of causing physical injury to the officer or another, but the state does not have to prove the defendant intended to create a substantial risk of causing physical injury to the officer or another.

State v. Cagle, 228 Ariz. 374, 266 P.3d 1070, ¶¶ 12–17 (Ct. App. 2011) (court noted legislature included mental state of "intentionally" in subsection (A) (intentionally preventing arrest), but not in subsection (1) (using physical force) or subsection (2) (creating substantial risk of causing physical injury); court held that placement of word "intentionally" where it was in statute rather than other places in statute where it could have been meant "intentionally" did not apply to elements (1) and (2)).

State v. Falcone, 228 Ariz. 168, 264 P.3d 878, ¶¶ 10–18 (Ct. App. 2011) (defendant contended effect of this statute on § 13–1405 was "knowing" mental state applied to element that victim was under 18 years of age; court rejected that argument, and held inclusion of lack of knowledge of victim's age as defense in § 13–1407(B) indicated "contrary legislative purpose").

State v. Rivera, 226 Ariz. 325, 247 P.3d 560, ¶¶ 3–5 (Ct. App. 2011) (elements of drive-by shooting are intentionally discharging a weapon from a motor vehicle at a person, another occupied vehicle, or occupied structure; because A.R.S. § 13–202 provides specified mental state applies to all elements unless particular element is specified, drive-by shooting of person requires intent to shoot at that person; because indictment charged defendant with shooting at particular person, and state presented no evidence defendant intended to shoot at that person, evidence was not sufficient to support that conviction).

13–205 Affirmative defenses; burden of proof.

.035 Senate Bill 1449, which sought to nullify the holding of *Garcia v. Browning* and make the previous amendment to § 13–205(A) "retroactively applicable to all cases in which the defendant did not plead guilty or no contest and that were pending . . . on April 24, 2006," is not unconstitutional as a violation of the separation of powers.

State v. Montes, 226 Ariz. 194, 245 P.3d 879, ¶¶ 8–19 (2011) (defendant committed his offenses 9/11/2005; because defendant committed his offenses prior to 4/24/2006, and his trial began after that date, trial court required defendant to prove he acted in self-defense; defendant was convicted and appealed; court affirmed conviction on 9/18/2009, and defendant filed motion for reconsideration, which was pending on 9/30/2009, effective date of Senate Bill 1449; defendant contended Senate Bill 1449 was change in law that entitled him to new trial; court held Senate Bill 1449 was not unconstitutional and thus entitled defendant to new trial.

13–301 Definitions. (Accountability.)

.010 An accomplice is a person who, with the intent to promote or facilitate the commission of an offense, solicits, aids, counsels, agrees to aid, or attempts to aid, or provides the means or opportunity to another person to commit the offense.

State v. King, 226 Ariz. 253, 245 P.3d 938, ¶¶ 14–17 (Ct. App. 2011) (defendant's brother kicked victim in left side, then punched him in face three or four times; defendant then ran over to victim and kicked him twice in left side; victim died 3 days later from blunt force trauma, which fractured five ribs and ruptured spleen; defendant was convicted of negligent homicide; defendant contended that, although he had intent to commit simple assault, he could not be convicted as accomplice because he did not intend to cause serious physical injury; court held all state had to prove was that defendant acted negligently and aided in attack that ultimately resulted in death).

13–303 Criminal liability based upon the conduct of another.

.020 A.R.S. § 13–303(B)(2) requires only that the accomplice aid, agree to aid, or attempt to aid another person in the conduct that caused the required result; it does not require planning or discussion, nor does it require direct facilitation of the principal's actions, or action contemporaneous with those of the principal.

State v. King, 226 Ariz. 253, 245 P.3d 938, ¶ 20 (Ct. App. 2011) (defendant's brother kicked victim in left side, then punched him in face three or four times; defendant then ran over to victim and kicked him twice in left side; victim died 3 days later from blunt force trauma, which fractured five ribs and ruptured spleen; defendant was convicted of negligent homicide; court rejected defendant's contention that, because he assaulted victim after brother assaulted victim, and because he did not say anything or make any plans or facilitate brother's actions, he could not be an accomplice).

.050 If a defendant has the specific intent to assist another person in engaging in certain conduct, the defendant is liable as an accomplice, even though the conduct results in a reckless or negligent offense.

State v. King, 226 Ariz. 253, 245 P.3d 938, ¶¶ 14–18 (Ct. App. 2011) (defendant's brother kicked victim in left side, then punched him in face three or four times; defendant then ran over to victim and kicked him twice in left side; victim died 3 days later from blunt force trauma, which fractured five ribs and ruptured spleen; defendant was convicted of negligent homicide; defendant contended that, although he had intent to commit simple assault, he could not be convicted as accomplice because he did not intend to cause serious physical injury; court held all state had to prove was that defendant acted negligently and aided in attack that ultimately resulted in death).

13–404(B)(2) Justification; self-defense—Force not justified in resisting arrest.

.010 A person may not threaten to use or use physical force to resist either a lawful or an unlawful arrest the person knows or should have known is being made by a peace officer, unless the peace officer uses physical force that exceeds that allowed by law.

x1 *State v. Flores,* ___ Ariz. ___, 260 P.3d 309, ¶¶ 14–17 (Ct. App. 2011) (defendant was convicted of resisting arrest; events started when defendant was posting yard sale signs, and when officer told him they violated city code, he took them down, but next day, signs were posted in same location; officer went to address written on them; when defendant came to door, officer told him to get his identification so officer could write citation, but defendant refused; another officer told officer he saw gun in vehicle parked in driveway; when officer asked defendant if he had any weapons on his person, defendant responded, "No, I don't have any fucking weapons on me; why the fuck would I have any weapons on me"; to explain their concerns, officers showed defendant weapon in vehicle, and defendant said it was toy gun; officers asked if defendant had any weapon in house, to which defendant aggressively retorted, "I have a whole bunch of fucking weapons, don't you"; when officer asked again for identification, defendant turned and walked quickly toward house, telling officers they were trespassing on his land; when defendant entered house, officers followed intending to arrest defendant for failing to provide identification; once inside, officer attempted to restrain defendant in dining area, but defendant broke away and headed down hallway; while in hallway, officers stopped defendant by grabbing hood of his sweatshirt; defendant turned around and assumed "aggressive stance" and swung arm in officers' direction, but missed; officers then grabbed defendant's arm, turned him around, and moved him out of house; defendant continued to yell and struggle with officers; court held force exerted by officers was within what was allowed by law, thus whether arrest was lawful or unlawful was not relevant and resistance was not permitted).

13–419 Presumption, exceptions; definitions.

.010 This section, which provides that a person is presumed to have acted reasonably if the person acted against another person who unlawfully or forcefully entered the person's residential structure, applies only to a defendant who is the lawful resident of the structure and charged with using force in response to someone unlawfully entering their home, and not to a victim who is the lawful resident of the structure when the defendant is charged with committing a crime in the victim's residence.

State v. Abdi, 226 Ariz. 361, 248 P.3d 209, ¶¶ 5–17 (Ct. App. 2011) (defendant entered victim's apartment, a struggle ensued, and defendant stabbed victim; court held trial court should not have given instruction based on this statute instructing jurors victim was presumed to have acted reasonably; because this instruction lessened state's burden of proof and because error was not harmless, court vacated defendant's conviction and remanded).

13–603(C) Authorized disposition of offenders—Restitution.

.100 This section imposed the affirmative duty upon the trial court to order the manner of payment of restitution, but this manner of payment applies only when the defendant is not confined to the AzDOC; when the defendant is confined to the AzDOC, the manner of payment is controlled by statute authorizing the AzDOC to make payments from the prisoner's funds.

State v. Stocks, 227 Ariz. 390, 258 P.3d 208, ¶¶ 20–24 (Ct. App. 2011) (trial court ordered defendant's restitution payments shall be 30% of defendant's *earnings* while incarcerated at

AzDOC; A.R.S. § 31–230(C) requires director of AzDOC to withdraw from 20% to 50% of the *monies available* in the prisoner's spendable account; AzDOC withdrew 20% of the monies available in defendant's spendable account; court rejected defendant's contention that § 31–230(C) infringed on court's power to order restitution under § 13–603(C), and held § 31–230(C) controlled payment while inmate is incarcerated).

13–604(A) Class 6 felony; designation—Judgment for misdemeanor.

.040 A class 6 offense is treated as a felony for all purposes relating to criminal law until designated otherwise.

State v. Russell, 226 Ariz. 416, 249 P.3d 1116, ¶¶ 7–12 (Ct. App. 2011) (defendant pled guilty to aggravated assault, and trial court suspended imposition of sentence and placed him on intensive probation; defendant violated probation by possessing marijuana; defendant contended that, because trial court could designate POM as misdemeanor, trial court could have found he violated probation by committing misdemeanor and thus did not have to revoke his probation; court rejected defendant's contention and held that, because POM was considered felony until designated misdemeanor and because trial court could not designate POM as misdemeanor until defendant had been convicted and sentenced, POM was considered felony, thus trial court had to revoke probation).

13–701(D)(24) Sentence of imprisonment for felony—Aggravating circumstances—Any other factor.

.020 Once the trier-of-fact has found the existence of one or more enumerated aggravating circumstances and thus the maximum range is increased, the trial court may then consider anything under the "catch all" aggravating factor to determine the sentence to be imposed within the maximum range.

State v. Bonfiglio, 228 Ariz. 349, 266 P.3d 375, ¶¶ 19–22 (Ct. App. 2011) (because trial court found as aggravating circumstance that defendant had prior conviction, trial court could consider as aggravating circumstance under "catch all" that defendant had ability to walk away from confrontation).

.030 The trial court may consider an element of the offense as an aggravating circumstance if it is specifically listed in A.R.S. § 13–702(C); if the element of the offense is not listed in § 13–702(C), the trial court may consider it as an aggravating circumstance only if the conduct was above that necessary to commit the offense.

State v. Bonfiglio, 228 Ariz. 349, 266 P.3d 375, ¶¶ 15–18 (Ct. App. 2011) (defendant contended aggravating circumstance that he had ability to walk away from confrontation was just another way of saying he acted intentionally; because aggravated assault requires as minimum reckless mental state, intentional conduct would be conduct above that necessary to commit offense).

.040 A trial court may not consider a defendant's lack of remorse or unwillingness to admit guilt as an aggravating circumstance.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶¶ 9–21 (Ct. App. 2011) (court noted trial court stated "no less than five times that Trujillo had either denied responsibility for the crime or that he had shown no remorse for his conduct," and thus found prejudicial fundamental error).

13–703 Repetitive offenders; sentencing.

.010 Although the trial court may not use a non-dangerous offense to enhance a dangerous offense, when the defendant has committed a dangerous offense and has two or more non-dangerous offenses, the trial court must sentence the defendant for a third-time non-dangerous offense.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶¶ 30–32 (Ct. App. 2011) (defendant was convicted of aggravated assault (dangerous), and had two non-dangerous prior convictions; trial court properly sentenced defendant with two non-dangerous prior convictions).

.020 A person shall be sentenced as a category one repetitive offender if the person is convicted of two felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions.

State v. Smith, 228 Ariz. 126, 263 P.3d 675, ¶¶ 12–18 (Ct. App. 2011) (defendant was convicted of aggravated DUI in present case, and endangerment in 1999; court agreed with state that defendant had two felony convictions that were not historical prior felony convictions (the present Aggravated DUI and the 1999 endangerment), and thus defendant was category one repetitive offender and thus not eligible for probation).

13–703(M) Repetitive offenders; sentencing—Conviction from court outside this jurisdiction.

.010 In order for a conviction from court outside this jurisdiction to be considered a prior conviction, it must be an offense that would have been punished as a felony if committed in this jurisdiction.

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 18–22 (Ct. App. 2011) (court concluded defendant's California conviction for attempted burglary would have been felony if committed in Arizona).

13–703(N) Repetitive offenders; sentencing—Proof of prior conviction.

.010 In order to enhance the punishment with a prior conviction, the state must present sufficient evidence for the trial court to conclude that a prior conviction actually occurred and that the defendant was the person who was convicted for that offense; this may be done through the use of extrinsic evidence, and a photograph and fingerprints are not required.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶ 29 (Ct. App. 2011) (state's expert testified fingerprint on sentencing minute entry was insufficient for comparison, but fingerprints in "pen pack" were positive match to control copy of defendant's fingerprints; court held pen pack by itself may be sufficient to establish prior conviction).

13–703(O) Repetitive offenders; sentencing—Ineligible for release.

.010 A person who is sentenced as a repetitive offender is not eligible for suspension of sentence, probation, pardon, or release from confinement on any basis (except as specifically authorized by statute) until either the person has served the sentence imposed by the court, the person is eligible for release pursuant to § 41–1604.07, or the sentence is commuted.

State v. Smith, 228 Ariz. 126, 263 P.3d 675, ¶¶ 12–18 (Ct. App. 2011) (defendant was convicted of aggravated DUI in present case, and endangerment in 1999; court agreed with state that defendant had two felony convictions that were not historical prior felony convictions (the present Aggravated DUI and the 1999 endangerment), and thus defendant was category one repetitive offender and thus not eligible for probation).

13–704 Dangerous offenders; sentencing.

.010 Although the trial court may not use a non-dangerous offense to enhance a dangerous offense, when the defendant has committed a dangerous offense and has two or more non-dangerous offenses, the trial court must sentence the defendant for a third-time non-dangerous offense.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶¶ 30–32 (Ct. App. 2011) (defendant was convicted of aggravated assault (dangerous), and had two non-dangerous prior convictions; trial court properly sentenced defendant with two non-dangerous prior convictions).

.020 If the defendant had been convicted of a dangerous offense and has two or more non-dangerous offenses and the trial court sentences the defendant for a third-time non-dangerous offense, the offense for which the defendant was convicted remains designated as a dangerous offense.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶¶ 33–37 (Ct. App. 2011) (defendant was convicted of aggravated assault (dangerous), and had two non-dangerous prior convictions; trial court properly sentenced defendant with two non-dangerous prior convictions; court rejected defendant's contention that new offense must be designated as non-dangerous).

13–704(L) Dangerous offenders; sentencing—Proof of prior conviction.

.010 In order to enhance the punishment with a prior conviction, the state must present sufficient evidence for the trial court to conclude that a prior conviction actually occurred and that the defendant was the person who was convicted for that offense; this may be done through the use of extrinsic evidence, and a photograph and fingerprints are not required.

State v. Trujillo, 227 Ariz. 314, 257 P.3d 1194, ¶ 29 (Ct. App. 2011) (state's expert testified fingerprint on sentencing minute entry was insufficient for comparison, but fingerprints in "pen pack" were positive match to control copy of defendant's fingerprints; court held pen pack by itself may be sufficient to establish prior conviction).

13–705(C) Dangerous crimes against children—Victim is 12, 13, or 14.

.010 Because the provisions of this section apply to certain crimes when the victim is "twelve, thirteen or fourteen years of age," it does not apply to a victim who is 15 years of age or older.

State v. Villegas, 227 Ariz. 344, 258 P.3d 162, ¶¶ 3–5 (Ct. App. 2011) (defendant was charged with luring minor for sexual exploitation as result of electronic communications with police detective posing as 14-year-old girl; because victim was not under 15 years of age, DCAC allegation did not apply; court distinguished this case, which was charged as completed crime, with opinion in prior case applying DCAC allegation to offense charged as attempted crime when victim was not under 15 years of age, but questioned continuing validity of that opinion).

State v. Regenold, 227 Ariz. 224, 255 P.3d 1028, ¶¶ 2–7 (Ct. App. 2011) (defendant was charged with luring minor for sexual exploitation as result of electronic communications with police detective posing as 14-year-old girl; because victim was not under 15 years of age, DCAC allegation did not apply).

.020 Although applicable statute did not provide a sentence for attempted sexual conduct with a minor, the trial court may still designate the offense as a dangerous crime against children.

State v. Goddard, 227 Ariz. 593, 261 P.3d 477, ¶¶ 7–9 (Ct. App. 2011) (defendant pled guilty to two counts of attempted sexual conduct with minor under 15 years old).

13–752(Q) Sentence of death, life imprisonment or natural life; imposition; sentencing procedure; definitions—life or natural life.

.020 In determining whether to impose a sentence of life or natural life, the trial court shall consider the aggravating and mitigating circumstances listed in section 13–701 and any statement made by the victim.

State v. Vermuele, 226 Ariz. 399, 249 P.3d 1099, ¶¶ 17–18 (Ct. App. 2011) (trial court imposed sentence of natural life; trial court said it was "not persuaded that any of these factors fit under our state's statutory definitions for mitigating factors"; defendant contended trial court failed to consider evidence in mitigation she presented; court concluded trial court was stating (albeit inartfully) that defendant's evidence in mitigation was not of sufficient weight to be considered mitigating circumstances under statutory definition).

13–754(A) Capital defendant's pre-screening evaluation for competency and sanity—Appointment of expert.

.010 If the state files a notice of intent to seek the death penalty, the court shall appoint a psychologist or psychiatrist to conduct a pre-screening evaluation to determine whether reasonable grounds exist to conduct further examinations.

State v. Delahanty, 226 Ariz. 502, 250 P.3d 1131, ¶¶ 6–12 (2011) (because state sought death penalty, trial court erred in not appointing expert to conduct evaluation; because defendant did not object at trial, court reviewed for fundamental error only, and concluded defendant failed to establish prejudice).

13–901(E) Probation—Early termination of probation.

.010 The court may terminate the period of probation or intensive probation and discharge the defendant at a time earlier than originally imposed if, in the court's opinion, the ends of justice will be served and if the conduct of the defendant on probation warrants it.

State v. Lewis, 226 Ariz. 124, 244 P.3d 561, ¶¶ 8–17 (2011) (on 9/15/03, defendant was placed on probation for 5 years; on 9/03/08, defendant's probation officer filed petition to terminate defendant's probation; although defendant was delinquent 245 hours of community service, had paid only $4,200 toward the $6,600 in fines and fees, and had violated probation three times, because defendant had completed 180 days in inpatient drug rehabilitation program and had remained drug-free, had completed 347 hours of community service, had married and had two children, attended church regularly, completed vocational training, and had maintained steady employment with same company for 2 years, trial court did not abuse discretion in terminating defendant's probation and designating it as "unsuccessful" termination).

.010 Because this statute provides the court may terminate probation if the ends of justice will be served and the defendant's conduct on probation warrants it, the only way the trial court may terminate probation is if the defendant's conduct indicates the defendant has been rehabilitated.

State v. Lewis, 226 Ariz. 124, 244 P.3d 561, ¶¶ 8–17 (2011) (defendant presented evidence of his successful completion of drug-treatment program, abstention from drugs and alcohol, performance of community service hours, payment of part of fines and fees owed, changes in lifestyle, acceptance of responsibility for his delinquencies, and letters of community support, which was sufficient to show defendant had been rehabilitated).

13–901(F) Probation—Jail term as a condition of probation.

.020 Because this section now specifically provides that the trial court may impose as a condition of probation imprisonment in the county jail "at whatever time or intervals, consecutive or nonconsecutive" "within the period of probation," a trial court may now impose consecutive periods of jail as conditions of two separate concurrent terms of probation.

Rasmussen v. Munger, ___ Ariz. ___, 260 P.3d 296, ¶¶ 5–9 (Ct. App. 2011) (trial court placed defendant on probation for two consecutive 7-year terms, and as condition of probation, serve two consecutive 1-year terms in jail; court rejected defendant's contention that the two consecutive 7-year terms were the "period of probation," and thus rejected defendant's contention that trial court could impose only one 1-year term in jail during that 14-year period of probation).

.030 Because this section now specifically provides that the trial court may impose as a condition of probation imprisonment in the county jail "at whatever time or intervals, consecutive or nonconsecutive" "within the period of probation," a trial court may now impose periods of jail as conditions of two separate consecutive terms of probation, but the defendant may serve the period in jail only during the period of probation associated with that period of jail.

Rasmussen v. Munger, ___ Ariz. ___, 260 P.3d 611, ¶¶ 10–12 (Ct. App. 2011) (trial court placed defendant on probation for two consecutive 7-year terms, and as condition of probation, serve two consecutive 1-year terms in jail; court held defendant could serve first 1-year term in jail only during first 7-year period of probation, and could serve second 1-year term in jail only during second 7-year period of probation, and because defendant had already served first 1-year term of jail, ordered defendant released from jail; in footnote 2, court noted this would provide incentive for defendant to perform well on probation during first term and plausibly seek modification to vacate or suspend second 1-year term in jail during second 7-year period of probation).

13–901.01(H)(4) Probation for persons convicted of possession and use of controlled substances; treatment; prevention; education—Methamphetamine conviction.

.010 When a defendant is convicted of a drug offense involving methamphetamine, probation is not available, and the trial court must sentence the defendant to prison.

State v. Siplivy, 228 Ariz. 305, 265 P.3d 1104, ¶ 9 (Ct. App. 2011) (defendant was convicted of transportation of methamphetamine for sale and possession of drug paraphernalia involving methamphetamine; court noted 2006 amendment unambiguously provides person convicted of drug offense involving methamphetamine does not qualify for mandatory probation).

.010 When a defendant is convicted of a drug offense not involving methamphetamine, but is also convicted of a drug offense involving methamphetamine, probation is not available for any of the drug offenses, and the trial court must sentence the defendant to prison on all offenses.

State v. Siplivy, 228 Ariz. 305, 265 P.3d 1104, ¶¶ 7–13 (Ct. App. 2011) (defendant was convicted of transportation of methamphetamine for sale, two counts of possession of narcotic drug, possession of marijuana, and five counts of possession of drug paraphernalia, two of which involved methamphetamine; trial court sentenced defendant to consecutive and concurrent prison terms totaling 12½ years; court held trial court properly imposed prison terms, even for non-methamphetamine offenses).

13–917(B) Modification of supervision—Commission of a felony offense.

.010 This section requires the trial court to revoke intensive probation and impose a term of imprisonment if it finds the defendant has committed a new felony offense, including a drug offense the court could later designate a misdemeanor.

State v. Russell, 226 Ariz. 416, 249 P.3d 1116, ¶¶ 7–12 (Ct. App. 2011) (defendant pled guilty to aggravated assault, and trial court suspended imposition of sentence and placed him on intensive probation; defendant violated probation by possessing marijuana; defendant contended that, because trial court could designate POM as misdemeanor, trial court could have found he violated probation by committing misdemeanor and thus did not have to revoke his probation; court rejected defendant's contention and held that, because POM was considered felony until designated misdemeanor and because trial court could not designate POM as misdemeanor until defendant had been convicted and sentenced, POM was considered felony, thus trial court had to revoke probation).

13–1201 Endangerment.

.010 In order to commit the crime of endangerment, the defendant must (1) recklessly endanger another person (2) with an actual substantial risk of imminent death, which requires the state to prove that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that the defendant's actions would place another person in substantial risk.

State v. Rivera, 226 Ariz. 325, 247 P.3d 560, ¶¶ 10–11 (Ct. App. 2011) (defendant attended party at house and was asked to leave; as he was driving away, he fired six shots at house; defendant contended evidence was insufficient to establish victims were near enough to room where bullets entered to be at risk; because detective testified defendant's gun was very powerful and evidence showed some bullets went through interior wall into other room and that all victims were in house at time of shooting, evidence was sufficient for jurors to find victims were endangered).

13–1209 Drive-by shooting; driver's license revocation.

.020 The elements of drive-by shooting are intentionally (1) discharging a weapon (2) from a motor vehicle (3) at a person, another occupied vehicle, or occupied structure; because A.R.S. § 13–202 provides a specified mental state applies to all elements unless a particular element is specified, drive-by shooting of a person requires an intent to shoot at that person.

State v. Rivera, 226 Ariz. 325, 247 P.3d 560, ¶¶ 3–5 (Ct. App. 2011) (because indictment charged defendant with shooting at particular person, and state presented no evidence defendant intended to shoot at that person, evidence was not sufficient to support that conviction).

13–1405 Sexual conduct with a minor.

.060 For a conviction under this statute, the state is required to prove (1) the defendant knowingly or intentionally engaged in sexual intercourse with the victim, and (2) the victim was under the age of 18 at that time; there is no requirement that the state prove the defendant knew the victim was under the age of 18.

State v. Falcone, 228 Ariz. 168, 264 P.3d 878, ¶¶ 10–18 (Ct. App. 2011) (defendant contended effect of § 13–202(A) on § 13–1405 was that "knowing" mental state applied to element that victim was under 18 years of age; court rejected that argument, and held inclusion of lack of knowledge of victim's age as defense in § 13–1407(B) indicated "contrary legislative purpose," thus mental state of knowing did not apply to element of offense of victim's age).

State v. Gamez, 227 Ariz. 445, 258 P.3d 263, ¶¶ 24–30, 38 (Ct. App. 2011) (21-year-old defendant met 13-year-old victim using chat room on Internet limited to those over 18 years of age; defendant met victim in New Mexico and drove her to Arizona; when defendant told victim she did not look 18, victim said she was really 16; defendant had sexual intercourse with victim when she was 13 and after she turned 14; victim gave defendant her telephone password, which was her birth date, and when defendant noted year was '94, victim did not say anything, and defendant told her to tell people she was 18; state charged defendant with having sexual intercourse with victim who was under age of 15 years, thus state had to prove victim was under age of 15 years, which it did as shown by jurors's verdict finding victim was 13 or 14 years of age; court held trial court properly ruled state was not required to prove as element of offense defendant knew victim was less than 18 years old).

13–1406 Sexual assault.

.020 The victim's non-consent, and the defendant's knowledge of the victim's non-consent, is an element of sexual assault.

State v. Kemper, ___ Ariz. ___, ___ P.3d ___, ¶¶ 2–6 (Ct. App. Nov. 1, 2011) (trial court instructed jurors state was required to prove defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with victim, and state was required to prove defendant did so without victim's consent, but erred in not instructing state was required to prove defendant knew such contact was without victim's consent).

13–1407(B) Defenses—Lack of knowledge of victim's age.

.010 It is a defense to a prosecution for § 13–1404 (sexual abuse) and § 13–1405 (sexual conduct with a minor) in which the victim's lack of consent is based on incapacity to consent because the victim was 15, 16, or 17 years of age that the defendant did not know and could not reasonably have known the age of the victim.

State v. Falcone, 228 Ariz. 168, 264 P.3d 878, ¶¶ 10–18 (Ct. App. 2011) (defendant was convicted of sexual conduct with a minor, § 13–1405; defendant contended effect of § 13–202(A) on § 13–1405 was that "knowing" mental state applied to element that victim was under 18 years of age; court rejected that argument, and held inclusion of lack of knowledge of victim's age as defense in § 13–1407(B) indicated "contrary legislative purpose," thus mental state of knowing did not apply to element of offense of victim's age).

State v. Gamez, 227 Ariz. 445, 258 P.3d 263, ¶ 26 (Ct. App. 2011) (defendant was convicted of sexual conduct with a minor, § 13–1405; 21-year-old defendant met 13-year-old victim using chat room on Internet limited to those over 18 years of age, and had sexual intercourse with her when she was 13 and after she turned 14; court held adopting defendant's argument that defendant's knowledge of victim's age was element of offense would make § 13–1407(B) superfluous; knowledge of victim's age therefore was not element of offense).

13–1421 Evidence relating to victim's chastity; pretrial hearing.

.020 This statute prohibits evidence of a victim's reputation for chastity, and allows such evidence only in limited exceptions.

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶ 46 (2011) (defendant contended trial court erred in precluding him from introducing entries from victim's diary, which he claimed contained victim's statement she had been sexually assaulted in Europe and would fight back if sexually assaulted again; court held this statute prohibited those statements, and exceptions were not applicable here).

.030 Sexual assaults qualify as sexual conduct under the rape shield law.

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶ 47 (2011) (defendant contended trial court erred in precluding him from introducing entries from victim's diary, which he claimed contained victim's statement she had been sexually assaulted in Europe and would fight back if sexually assaulted again; court rejected defendant's contention that, because sexual assault is a crime of violence, it does not reflect on victim's chastity; court noted majority of courts hold sexual assaults qualify as sexual conduct under the rape shield law).

13–1802(A) Theft—Elements.

.010 Theft is a single unified offense, thus a defendant is not entitled to a special verdict that would require the jurors to identify under which subsection they found the defendant guilty.

State v. Cotton, 228 Ariz. 105, 263 P.3d 654, ¶¶ 3–6 (Ct. App. 2011) (indictment charged theft in violation of § 13–1802; trial court instructed jurors they could find defendant guilty if he violated subsection (A)(1) or subsection (A)(5); court stated defendant was not entitled to unanimous verdict on precise manner in which act was committed).

13–1804(C) Theft by extortion—Punishment.

.010 Theft by extortion by means of a deadly weapon or dangerous instrument is a class 2 felony; otherwise it is a class 4 felony.

State v. Garcia, 227 Ariz. 377, 258 P.3d 195, ¶¶ 5–18 (Ct. App. 2011) (defendant threatened to kill victim unless victim's family gave him money and drugs; defendant convicted of class 2 extortion; court held that, even though killing is usually accomplished by deadly weapon or dangerous instrument, there was no evidence that defendant ever threatened to use deadly weapon or dangerous instrument, thus evidence only supported conviction of class 4 extortion).

13–2201(7) Definitions—Security interest.

.010 "Security interest" is defined as an interest in personal property or fixtures.

State v. Bhatt, ___ Ariz. ___, 260 P.3d 1088, ¶¶ 24–25 (Ct. App. 2011) (court rejected defendant's contention § 13–2204 was vague because Title 47, chapter 9, does not provide specific definition of "security interest").

13–2204 Defrauding secured creditors.

.010 A person commits defrauding secured creditors if the person knowingly destroys, removes, conceals, encumbers, convērts, sells, obtains, transfers, controls, or otherwise deals with property subject to a security interest with the intent to hinder or prevent the enforcement of that interest.

State v. Bhatt, ___ Ariz. ___, 260 P.3d 1088, ¶¶ 11–25 (Ct. App. 2011) (in 2006, defendant purchased house subject to security interest; in 2008, defendant began missing payments; in December 2008, lien holder sent notice that property would be sold at public auction March 25, 2009, but sale was postponed while defendant and lien holder negotiated; in April 2009, defendant decided to sell highly upgraded cabinets, counters, and appliances from property and replace them with cheaper ones, and so placed ads online; ad came to attention of detective, who posed as buyer and negotiated sale price of $9,000, detective and another detective introduced as her husband met defendant at property and gave defendant $2,000 as down payment, and agreed to pay the remaining $7,000 when they got items that weekend; when detectives left house, they signaled other officers, who arrested defendant; court held evidence was sufficient

for jurors to conclude defendant "sold" items, even though they were not removed from property; court further held evidence was sufficient for jurors to conclude defendant intended to "hinder or prevent" enforcement of security interest; and held statute was not vague).

13–2508(A) Resisting arrest—Actions against peace officer.

.090 A person commits the offense of resisting arrest by preventing or attempting to prevent a peace officer from "effecting an arrest"; the individual need not be specifically advised he or she is under arrest in order to be guilty of resisting arrest.

State v. Barker, 227 Ariz. 89, 253 P.3d 286, ¶¶ 6–10 (Ct. App. 2011) (after defendant refused three times to turn around and be placed in handcuffs, officer reached out with one hand, but defendant pulled away; officer reached out with both hands, but defendant broke free; another officer arrived and executed "impact push" on defendant, and all three fell to ground; officer told defendant to lie down on ground or he would taser him; defendant walked toward his truck, and officer tasered defendant, and defendant grabbed wires, broke them, and ran at officer; when defendant had his arms wrapped around officer, other officer grabbed defendant's arms and all three fell to ground; two officers struggled with defendant until third officer arrived and handcuffed him; court rejected defendant's contention that, because he was not placed under arrest, he could not have resisted arrest, and held individual need not be specifically advised he or she is under arrest in order to be guilty of resisting arrest).

13–2508(A)(2) Resisting arrest—Using any other means.

.020 To establish resisting arrest under subsection (A)(2), the state must prove the defendant intentionally prevented an arrest and created a substantial risk of causing physical injury to the officer or another, but the state does not have to prove the defendant intended to create a substantial risk of causing physical injury to the officer or another.

State v. Cagle, 228 Ariz. 374, 266 P.3d 1070, ¶¶ 10–17 (Ct. App. 2011) (while defendant was in vehicle, officer advised him he was under arrest, but defendant did not get out of vehicle; in pulling defendant out of vehicle, officers and defendant were halfway into traffic lane so that oncoming vehicles had to swerve to avoid hitting officers and defendant; court held defendant's actions thus created substantial risk of causing physical injury to officers, but held state did not have to prove defendant intended to create substantial risk of causing physical injury).

13–3408(A) Possession, use, administration, acquisition, sale, manufacture or transportation of narcotic drugs—Offenses.

.070 To be guilty of possession for sale, the state must present sufficient evidence that the defendant possessed the dangerous drug for the purpose of selling it.

State v. Martinez, 226 Ariz. 221, 245 P.3d 906, ¶¶ 11–15 (Ct. App. 2011) (witness testified he bought methamphetamine from defendant at his home two or three times a week and would either pay in cash or with cold pills; that defendant kept methamphetamine in master bedroom; and that defendant produced methamphetamine in master bedroom and master bathroom; court held this was sufficient evidence for possession for sale even though police found only two baggies of methamphetamine in master bedroom).

.090 Because it is possible to possess dangerous drugs for sale without manufacturing them, and it is possible to be found guilty of manufacturing dangerous drugs even if no drugs are found in the defendant's possession, a person may receive consecutive sentences for both manufacturing dangerous drugs and possessing dangerous drugs for sale.

State v. Martinez, 226 Ariz. 221, 245 P.3d 906, ¶¶ 16–25 (Ct. App. 2011) (police found numerous items used for manufacturing methamphetamine, and state presented evidence from witness who had bought methamphetamine from defendant).

13–3554 Luring a minor for sexual exploitation.

.010 Subsection (B) provides it is not a defense that the other person is not a minor, while subsection (C) provides a conviction is punishable under § 13–705 (DCAC) "if the minor is under 15 years of age"; thus while a defendant may be convicted of this offense if the victim is a person posing as a minor, the defendant may not be punished for a DCAC unless the victim is under 15 years of age.

State v. Villegas, 227 Ariz. 344, 258 P.3d 162, ¶¶ 3–5 (Ct. App. 2011) (defendant was charged with luring minor for sexual exploitation as result of electronic communications with police detective posing as 14-year-old girl; because victim was not under 15 years of age, DCAC allegation did not apply; court distinguished this case, which was charged as completed crime, with opinion in prior case applying DCAC allegation to offense charged as attempted crime when victim was not under 15 years of age, but questioned continuing validity of that opinion).

State v. Regenold, 227 Ariz. 224, 255 P.3d 1028, ¶¶ 2–7 (Ct. App. 2011) (defendant was charged with luring minor for sexual exploitation as result of electronic communications with police detective posing as 14-year-old girl; because victim was not under 15 years of age, DCAC allegation did not apply).

13–3967. Release on bailable offense before trial.

.030 The purposes of bail are (1) to assure the appearance of the accused, (2) to protect against intimidation of witnesses, and (3) to protect the safety of the victim, any other person, and the community; any bail set at an amount greater than necessary to achieve those purposes is excessive within the meaning of the Arizona Constitution and is therefore prohibited.

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶¶ 7–10 (Ct. App. 2011) (state charged defendant with two counts of continuous sexual abuse of child; defendant filed petition for special action challenging trial court's order setting bond at $75 million cash; court noted § 13–3967(B) lists 2 factors for trial court to consider in setting bail, and held bond in this amount was excessive).

13–3967(E). Release on bailable offense before trial—Person charged with violation of Chapter 14 or Chapter 35.1.

.010 For a person charged with violation of Chapter 14 or Chapter 35.1 the trial court shall impose a condition of electronic monitoring where available, but if electronic monitoring is not available in a particular location, that will not preclude the trial court from ordering the person released on bail to that location.

Haag v. Steinle, 227 Ariz. 212, 255 P.3d 1016, ¶¶ 11–16 (Ct. App. 2011) (defendant wanted to be released to his home in Buffalo, New York; because Maricopa County does not track out-of-state defendants by electronic monitoring, and because Buffalo does not utilize electronic monitoring, the trial court concluded it lacked authority to release defendant to Buffalo; court held

"where available" language in statute required trial court to order electronic monitoring if available in that location, but did not preclude trial court from ordering person released on bail to location if electronic monitoring was not available there).

13–4032 Appeal by state—When the state has no right to appeal.

.020 The state does not have the right to appeal from an order denying a motion for reconsideration.

State v. Limon, ___ Ariz. ___, ___ P.3d ___, ¶¶ 4–9 (Ct. App. Dec. 21, 2011) (on 1/20/2011, trial court granted defendant's motion to suppress; state filed motion for reconsideration, which trial court denied 3/23/2011; on 3/30/2011, state filed notice of appeal from trial court's 1/20 order and 3/23 denial of motion for reconsideration; court held state had no right to appeal from order denying motion for reconsideration, and held 3/30/2011 notice of appeal was untimely for 1/20/2011 order granting motion to suppress).

13–4032(7) Appeal by state—Judgment of acquittal after a verdict of guilty.

.010 The state may not appeal a judgment of acquittal entered before a jury verdict, even if the trial court wrongly grants the motion, but the state may appeal a judgment of acquittal entered after the jurors have found the defendant guilty.

State v. West, 226 Ariz. 559, 250 P.3d 1188, ¶ 13 (2011) (court made statement in context of discussion of standard for ruling on pre- and post-verdict motions for judgment of acquittal).

13–4033(B) Appeal by defendant—No appeal from guilty plea or admission of violation of probation.

.070 If a defendant pleads guilty and is placed on probation, if the State files a petition to revoke probation and the defendant admits the violation, the defendant may not appeal from the subsequent judgment and sentence, but if the defendant contests the violation and the State proves the violation after a contested hearing, the defendant may appeal from the subsequent judgment and sentence.

State v. Regenold, 226 Ariz. 378, 249 P.3d 337, ¶¶ 5–8 (2011) (defendant pled guilty and trial court suspended imposition of sentence and placed him on probation; state petitioned to revoke probation; after contested probation violation hearing, trial court found defendant had violated probation and sentenced him to prison; court held defendant was seeking review from contested hearing and not from plea agreement, thus defendant had right to appeal).

13–4033(C) Appeal by defendant—Absence at time of sentencing.

.010 Because this statute applies to a defendant's conduct after the time the defendant committed the offense for which he or she has been convicted and does not affect the punishment for the offense, the passing of this statute after the date of the offense does not result in a violation of the *ex post facto* clause.

State v. Bolding, 227 Ariz. 82, 253 P.3d 279, ¶¶ 3–17 (Ct. App. 2011) (in 12/2008, jurors found defendant guilty of offenses defendant committed some time between 12/1991 and 11/2004; defendant failed to appear for verdict and trial court issued warrant for his arrest; statute became effective 9/26/2008; defendant was arrested 6/20/2009; because operative conduct was defendant's failure to appear, which defendant did after effective date of statute, applying statute to him did not violate *ex post facto* clause).

.020 This section precludes a defendant from appealing if the defendant voluntarily absents himself or herself and that prevents the sentencing from occurring within 90 days after conviction; because the Arizona Constitution grants to a defendant the right to appellate review of a conviction, subsection (C) is unconstitutional unless it is shown the defendant knowingly and voluntarily waived the right to appeal by being absent.

State v. Bolding, 227 Ariz. 82, 253 P.3d 279, ¶¶ 18–20 (Ct. App. 2011) (although applying statute to defendant would not have violated *ex post facto* clause, there was no showing defendant knew his absenting himself would result in waiver of appeal, so any waiver of appeal would not have been knowing or voluntary).

13–4402(A) Implementation of rights and duties—When rights arise and continue.

.020 The rights and duties continue to be enforceable until final disposition of the charges against the defendant, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings, and discharge of all criminal proceedings relating to restitution.

State v. Leonardo (Gannon), 226 Ariz. 593, 250 P.3d 1222, ¶¶ 5–11 (2011) (because trial court placed defendant on probation, and because probation is not a sentence, and because defendant was still on probation, there was no final disposition of charges yet, thus victim was entitled to all rights under Victim's Bill of Rights).

13–4433(A) Victim's right to refuse an interview—Right to refuse.

.020 The Victim's Bill of Rights gives a victim in a criminal proceeding the right to refuse to be deposed in a parallel civil proceeding by the defendant, the defendant's attorney, or an agent of the defendant.

Winterbottom v. Ronan, 227 Ariz. 364, 258 P.3d 182, ¶¶ 2–7 (Ct. App. 2011) (in 2000, Winterbottom pled guilty to attempted molestation of his two step-daughters; step-daughters, through their mother, filed suit against Winterbottom for tort damages and settled for $2.2 million, which included various execution agreements, but allowed them to execute against one-third of any money Winterbottom might receive in malpractice action against his attorney; in Winterbottom's malpractice action against his attorney, that attorney's attorney sought to depose step-daughters; trial court ordered deposition, and step-daughters brought special action to challenge that ruling; court held that victims were not being deposed by the criminal defendant, his representative, or someone acting on the criminal defendant's behalf, thus VBR did not preclude deposition).

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶¶ 2, 8–14 (Ct. App. 2011) (question was whether victims in criminal proceeding (involving fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding; court held victims retained constitutional right to refuse to be deposed by defense in civil proceeding).

13–4437(A) Standing to invoke rights; recovery of damages—Victim's standing.

.010 This statute expressly authorizes victims to preserve their rights under the Victim's Bill of Rights by special action proceedings.

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶ 2 (Ct. App. 2011) (issue was whether victims in criminal proceeding (involving fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding).

15–507 Abuse of teacher or school employee in school.

.010 This statute, which provides, "A person who knowingly abuses a teacher or other school employee on school grounds while the teacher or employee is engaged in the performance of his duties is guilty of a class 3 misdemeanor," is over broad, but is constitutional if limited to fighting words.

In re Nickolas S., 226 Ariz. 182, 245 P.3d 446, ¶¶ 10–18 (2011) (court of appeals held statute was constitutional if limited to fighting words in cases involving pure speech, and juvenile did not argue that court of appeals erred in reaching that conclusion; Arizona Supreme Court assumed for purpose of appeal that statute was not fatally over broad of vague if narrowed to apply to fighting words).

21–211 Jurors—Disqualification.

.010 A peace officer employed by the law enforcement agency that investigated a criminal case is a person interested directly or indirectly in that case, and as such is disqualified from serving as a juror on that case.

State v. Eddington, 228 Ariz. 361, 266 P.3d 1057, ¶¶ 7–19 (2011) (court held peace officer who is currently employed by same agency, office, or department that conducted investigation in criminal case is interested person and must therefore be stricken for cause; in this case, prospective juror was deputy who was employed by same sheriff's department that investigated case, knew six or seven of state's 14 potential witnesses from sheriff's department, including lead detective, and was currently assigned to provide security for superior court and thus knew why there were two security officers in courtroom; court held trial court should have stricken that prospective juror for cause even though deputy avowed he could be fair and impartial and would not treat testimony of law enforcement officers differently from any other witness).

21–412 Evidence on behalf of person under investigation.

.010 The county attorney must inform the grand jurors when the defendant has requested to appear or has submitted exculpatory evidence.

Bashir v. Pineda, 226 Ariz. 351, 248 P.3d 199, ¶¶ 7–22 (Ct. App. 2011) (defendant's 4-year-old son was found floating in family swimming pool and later died; defendant's attorney sent DCA 10-page letter detailing family history, son's health, details about incident, and investigation that differed from police report; subsequent e-mails specifically stated defendant would like to testify before grand jurors and further asked DCA to present exculpatory evidence contained in letter; DCA advised grand jurors only that defendant made written request to testify; court held DCA should have presented defendant's proposed evidence to grand jurors, and error was not harmless because proposed testimony may have affected grand jurors' decision to indict).

Black v. Coker, 226 Ariz. 335, 247 P.3d 1005, ¶¶ 9–20 (Ct. App. 2011) (shortly after midnight, 12-year-old victim awoke to find person standing in her bedroom; victim recognized person as man who lived across street; at 4:22 p.m., defendant's attorney faxed letter to county attorney's office stating defendant wished to present testimony and other evidence to grand jurors; next day state presented case to grand jurors; DCA presenting case to grand jurors was not DCA named in letter sent by defendant's attorney; DCA did not inform grand jurors of defendant's request; court held that, even though letter did not provide any details about possible testimony, letter did make unequivocal request to appear and testify, thus state had duty to so inform grand jurors; court held error was harmless because court could not conceive of any testimony by defendant that would explain away contemplated charge, and because failure to inform grand jurors appeared to have been inadvertent).

22–375(A) Jurisdiction of Court of Appeals.

.020 When a person is convicted in a court of limited jurisdiction and then obtains a trial *de novo* in superior court because either no transcript exists or the record is deemed insufficient, if the person is then convicted and appeals to the court of appeals, the jurisdiction of the court of appeals is limited to a review of a tax, impost, assessment, toll, municipal fine, or statute.

State v. Eby, 226 Ariz. 179, 244 P.3d 1177, ¶¶ 3–5 (Ct. App. 2011) (defendant was convicted of DUI in justice court, and then obtained trial *de novo* in superior court; court of appeals held its jurisdiction was limited as in any appeal from superior court of a case originating in court of limited jurisdiction, and rejected defendant's claim that he was entitled to full review of proceedings in superior court).

28–661 Accidents involving death or personal injuries; failure to stop.

.050 The purpose of this statute is to require a person to remain and render aid when a person is injured or killed, thus the person injured or killed is considered a "victim" under the Victim's Bill of Rights.

State ex rel. Smith v. Reeves (Aguirre), 226 Ariz. 419, 250 P.3d 196, ¶¶ 10–21 (Ct. App. 2011) (court held trial court erred in concluding child killed in hit-and-run was not a "victim" and thus child's parents were not entitled to assert rights under Victim's Bill of Rights).

28–939 Signal lamps and devices.

.010 Because the statute requires only that a vehicle be equipped with a stop lamp, and because the statute refers to "a stop lamp" and "a signal lamp or lamps," a vehicle need have only one stop lamp that is in working condition, thus if a vehicle has more than one stop lamp, the failure of a stop lamp to be in working condition is not a violation of this statute as long as one stop lamp is in working condition.

State v. Fikes, 228 Ariz. 389, 267 P.3d 1181, ¶¶ 3–16 (Ct. App. 2011) (officer stopped defendant because stop lamp at top of vehicle was not working; because vehicle had two other stop lamps that were working, defendant was not in violation of statute and officer thus did not have legal authority to stop him).

28–1381(A)(1) Driving or actual physical control—Person under the influence of intoxicating liquor.

.010 This statute prohibits a person from driving or having actual physical control of a vehicle while under the influence if the person is impaired to the slightest degree; it does not require that the person's ability to drive a vehicle is impaired.

State v. Miller (Oliveri), 226 Ariz. 190, 245 P.3d 454, ¶¶ 4–10 (Ct. App. 2011) (court held RAJI 28.1381(A)(1)–1, which includes language that "defendant's ability to drive a vehicle was impaired to the slightest degree" was incorrect statement of law).

31–230(C) Prisoner spendable accounts—Court ordered restitution.

.010 This section provides the Arizona Department of Corrections may withdraw each month 20 to 50 percent of the funds in an inmate's spendable account to pay restitution, even if others have deposited funds in that account and specifically provided those funds are not to be used to pay restitution.

State v. Glassel, 226 Ariz. 369, 248 P.3d 217, ¶¶ 6–11 (Ct. App. 2011) (defendant's family members deposited monies in defendant's spendable account and expressly provided funds should not be used to pay restitution; court held there was no exemption for gifts made to inmate's spendable account, thus trial court erred in not ordering AzDOC to withdraw amounts each month to pay toward restitution).

38–545 Local public officer's financial disclosure.

.010 Every incorporated city or town or county, by ordinance, rule, resolution, or regulation, shall adopt standards of financial disclosure.

State v. Stapley, 227 Ariz. 61, 251 P.3d 1048, ¶¶ 3, 13–21 (Ct. App. 2011) (court concluded county did not adopt financial disclosure requirements, thus defendant did not violate statute by not filing financial disclosure forms).

February 26, 2012